

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SHAE D'LYN and EDGAR ROSA POMALES

Plaintiffs,

**ANSWER BY CITY OF NEW
YORK**

-against-

JURY TRIAL DEMANDED

THE CITY OF NEW YORK; NEW YORK CITY POLICE
OFFICER PAOLA RUSSELL; NEW YORK CITY
POLICE OFFICER ALMODOVAR; NEW YORK CITY
POLICE OFFICERS JANE AND JOHN DOES 1
THROUGH 8,

07 Civ. 7233 (DAB)

Defendants.
----- X

Defendant City of New York, by its attorney Michael A. Cardozo, Corporation Counsel of the City of New York, as and for an answer to the Complaint, respectfully alleges upon information and belief as follows:

1. Denies the allegations set forth in paragraph "1" of the complaint, except admits that plaintiff purports to bring this action as stated therein.
2. Denies the allegations set forth in paragraph "2" of the complaint.
3. Denies the allegations set forth in paragraph "3" of the complaint.
4. Denies the allegations set forth in paragraph "4" of the complaint, except admits that plaintiff purports to bring this action and invoke the jurisdiction of this Court as stated therein.
5. Denies the allegations set forth in paragraph "5" of the complaint, except admits that plaintiff purports to bring this action and invoke the jurisdiction of this Court as stated therein.

6. Denies the allegations set forth in paragraph “6” of the complaint, except admits that plaintiff purports to bring this action in the venue of this Court as stated therein.

7. Defendant states that the allegations set forth in paragraph “7” of the complaint are not averments requiring responses.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “8” of the complaint.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “9” of the complaint.

10. Admits the allegations set forth in paragraph “10” of the complaint.

11. Denies the allegations set forth in paragraph “11” of the complaint, and respectfully refers this Court to the New York City Administrative Code and New York City Charter for a recitation of the relationship between the City and the New York City Police Department.

12. Denies the allegations set forth in paragraph “12” of the complaint, except admits that Paola Russell is employed as a police officer with the New York City Police Department and was assigned to the 5th Precinct on July 9, 2006.

13. Denies the allegations set forth in paragraph “13” of the complaint.

14. Denies the allegations set forth in paragraph “14” of the complaint.

15. Defendant states that the allegations set forth in paragraph “15” of the complaint constitute legal conclusions to which no response is required.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “16” of the complaint.

17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “17” of the complaint.

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “18” of the complaint.

19. Denies the allegations set forth in paragraph “19” of the complaint.

20. Denies the allegations set forth in paragraph “20” of the complaint.

21. Denies the allegations set forth in paragraph “21” of the complaint.

22. Denies the allegations set forth in paragraph “22” of the complaint.

23. Denies knowledge or information sufficient to form a belief a to the truth of the allegations set forth in paragraph “23” of the complaint.

24. Denies the allegations set forth in paragraph “24” of the complaint.

25. Denies the allegations set forth in paragraph “25” of the complaint.

26. Denies the allegations set forth in paragraph “26” of the complaint, except admits that plaintiffs were issued a summons.

27. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “27” of the complaint.

28. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “28” of the complaint.

29. Denies the allegations set forth in paragraph “29” of the complaint, except admits that a document purporting to be a Notice of Claim for Edgardo Rosa Pomales was received by the City of New York Office of the Comptroller on October 6, 2006.

30. In response to the allegations set forth in paragraph "30" of the complaint, defendant repeats and realleges the responses set forth in all the preceding paragraphs of this answer as if fully set forth herein.

31. Denies the allegations set forth in paragraph "31" of the complaint.

32. Denies the allegations set forth in paragraph "32" of the complaint.

33. In response to the allegations set forth in paragraph "33" of the complaint, defendant repeats and realleges the responses set forth in all the preceding paragraphs of this answer as if fully set forth herein.

34. Denies the allegations set forth in paragraph "34" of the complaint.

35. Denies the allegations set forth in paragraph "35" of the complaint.

36. Denies the allegations set forth in paragraph "36" of the complaint.

37. In response to the allegations set forth in paragraph "37" of the complaint, defendant repeats and realleges the responses set forth in all the preceding paragraphs of this answer as if fully set forth herein.

38. Denies the allegations set forth in paragraph "38" of the complaint.

39. In response to the allegations set forth in paragraph "39" of the complaint, defendant repeats and realleges the responses set forth in all the preceding paragraphs of this answer as if fully set forth herein.

40. Denies the allegations set forth in paragraph "40" of the complaint.

41. In response to the allegations set forth in paragraph "41" of the complaint, defendant repeats and realleges the responses set forth in all the preceding paragraphs of this answer as if fully set forth herein.

42. Denies the allegations set forth in paragraph "42" of the complaint.

FOR A FIRST AFFIRMATIVE DEFENSE

43. The complaint fails to state a claim upon which relief can be granted.

FOR A SECOND AFFIRMATIVE DEFENSE

44. Any injuries in the complaint were caused, in whole or in part, by plaintiffs' culpable or negligent conduct.

FOR A THIRD AFFIRMATIVE DEFENSE

45. At all times relevant to the acts alleged in the complaint, the duties and functions of defendant's officials entailed the reasonable exercise of proper and lawful discretion. Therefore, defendant City of New York is entitled to governmental immunity from liability.

FOR A FOURTH AFFIRMATIVE DEFENSE

46. Plaintiffs provoked any incident.

FOR A FIFTH AFFIRMATIVE DEFENSE

47. Plaintiffs' claims are barred, in whole or in part, because plaintiffs failed to comply with all conditions precedent to suit.

FOR A SIXTH AFFIRMATIVE DEFENSE

48. Defendant has not violated any rights, privileges or immunities secured to plaintiff by the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor has the defendant violated any act of Congress providing for the protection of civil rights.

FOR A SEVENTH AFFIRMATIVE DEFENSE

49. There was probable cause for plaintiffs' arrest.

FOR AN EIGHTH AFFIRMATIVE DEFENSE

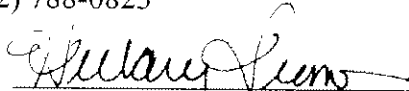
50. Punitive damages are not available against the City of New York.

WHEREFORE, defendant City of New York respectfully requests judgment dismissing the complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court deems just and proper.

Dated: New York, New York
December 10, 2007

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By:


Hillary A. Frommer (HF 9286)
Senior Counsel

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OFFICERS JANE AND JOHN DOES 1 THROUGH 8,

Defendants.

ANSWER BY DEFENDANT CITY

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NYCLIS No. 2007-025781*

Due and timely service is hereby admitted.

New York, N.Y., 200.....

..... Esq.

Attorney for